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In the

Supreme Court of the United States.

OCTOBER TERM, 1944.

No. 189.

THE CONNECTICUT LIGHT AND POWER COMPANY,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

REPLY BRIEF FOR PETITIONER.

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INDEX.

	Page
Preliminary Statement	1
I. Discussion of Respondent's Contentions under the heading "Petitioner is a 'Public Utility' within the meaning of the Federal Power Act"	3
A. The evidentiary basis of the finding	5
B. Discussion of Respondent's contention that "the finding has a reasonable basis in law"	6
II. Discussion of Respondent's contention that "regardless of petitioner's present status, it was a 'public utility' while the Commission's accounting orders were in effect, and it remains under a duty to comply with such orders for the period in which it was subject to the Commission's jurisdiction"	11
III. Conclusion	14
APPENDIX	16
Discussion of the nature and function of Petitioner's facilities in its Bristol, East Hampton, and Torrington-Winsted districts which were held by the Commission to be facilities "for the transmission of electric energy . . . as distinguished from local distribution thereof"	16

INDEX OF CASES.

	Page
Hartford Electric Light Co. v. Federal Power Commission, 131 F. 2d 953 (C. C. A. 2d)	2, 14
Jersey Central Power and Light Company v. Federal Power Commission, 319 U. S. 61	2
National Labor Relations Board v. Hearst Publications, Inc., 322 U. S. 111, 130–131	2

STATUTE.

Federal Power Act § 201	2, 5, 6

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REPLY BRIEF FOR PETITIONER.

The brief for the Respondent, Federal Power Commission, requires, we submit, no change in any position taken in our brief filed for Petitioner. We regard most of Respondent's contentions as in effect answered or rendered immaterial by what has been said in our brief.

Certain contentions of Respondent, however, call for further comment. We will discuss these, following in general the arrangement of material under the specific headings in the argument in Respondent's brief.

PRELIMINARY STATEMENT.

At the outset Respondent's brief indicates that judicial review is limited to ascertaining whether the determination of the Commission has "warrant in the record and a reasonable basis in law".

The discussion of this contention in Respondent's brief

requires some clarification. It should be borne in mind that Respondent's principal contentions are all questions of statutory interpretation which are now arising for the first time in judicial proceedings.

As the Court said in *National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U.S. 111, 130-131:

> "Undoubtedly questions of statutory interpretation, especially when arising in the first instance in judicial proceedings, are for the courts to resolve, giving appropriate weight to the judgment of those whose special duty is to administer the questioned statute."

The Federal Power Commission, like the Tariff Commission and the Interstate Commerce Commission (which were involved in the cases cited after the language just quoted), is charged, in the matters here involved, with functions quite unlike those of the National Labor Relations Board in proceedings to enjoin unfair labor practices. The construction of the Federal Power Act here, unlike the determination of the question as to who are employees (which was involved in the case just cited), goes to the basis not merely of the jurisdiction of the Commission as an administrative agency, but also to the jurisdiction of the national government within our federal system.

It is significant that in somewhat similar cases which have arisen under the Federal Power Act the Courts have themselves construed the statute, and there is nothing in the language of the opinions which indicates that any particular weight was given to the view of the Commission as to the construction of the statute. See *Jersey Central Power and Light Co.* v. *Federal Power Commission*, 319 U.S. 61; *Hartford Electric Light Co.* v. *Federal Power Commission*, 131 F. 2d 953 (C.C.A. 2d); and also the opinion of the Court below in the case at bar. (R. 1170)

If the provisions for review of the Federal Power Act were administered in the manner suggested in Respondent's brief, they would be of little benefit to one questioning any decision of the Commission. Where, as here, the question is one between the Commission itself and a party, it would be particularly inappropriate and unjust if the Commission's determination of questions of law in favor of its own jurisdiction in the specific case before it were regarded as conclusive unless lacking any reasonable basis. There is nothing in the Act indicating any intent on the part of Congress thus to deprive the Federal Courts of their historic judicial prerogatives and duties.*

I.

DISCUSSION OF RESPONDENT'S CONTENTIONS UNDER THE HEADING "PETITIONER IS A 'PUBLIC UTILITY' WITHIN THE MEANING OF THE FEDERAL POWER ACT".

Respondent's brief, under this heading, refers to the Commission's conclusions that "'electric energy generated in Massachusetts was supplied' to petitioner's Bristol 'facilities regularly, frequently, for substantial periods of time, and in substantial amounts', and that certain designated facilities at petitioner's Bristol substation are

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* One of the conclusions of the Commission which the Respondent argues is entitled to great weight is its conclusion relating to facilities "used in local distribution". A basis which Respondent's brief asserts the Commission had for its conclusions in this matter is the opinion evidence of one of its engineers who was called as a witness. (Brief, pp. 19-20, 24-25) When he was asked as to the meaning of the terms "transmission" and "local distribution", objection was made by Petitioner's counsel. The Trial Examiner, however, said (R. 498):

> "I think this clearly shows that it is not intended as an interpretation of the Act. . . . For that reason, and with the understanding that this is taken only in that narrower sense the witness will be permitted to answer."

Now, however, the Commission is taking the position that the basis for its conclusion is this very testimony of this witness.

'facilities for the transmission of electric energy in interstate commerce', as distinguished from 'facilities for local distribution', and hence are subject to the jurisdiction of the Commission."

The brief then asserts,

> "We submit that these findings were properly sustained by the court below, since they have warrant in the record and a reasonable basis in law."

This gives an erroneous impression of what the Court below decided. Its opinion says (R. 1170):

> ". . . the sole question before us is whether the finding of the Commission to that effect [Petitioner is a public utility under the Act] is sustained by substantial evidence and by a correct interpretation of the law."

It concludes (R. 1178):

> "The finding of the Commission that petitioner is a public utility is amply supported by the evidence."

The opinion of the Court is, however, vague as to just what, if any, specific findings of fact it sustains.

There is no discussion as to the meaning of the words "facilities for transmission of electric energy in interstate commerce", although the opinion does state that "the Federal Power Act made the test of jurisdiction depend, not on the current definition of 'interstate commerce', but on the actual transmission of electric energy from one State to another without regard to the mechanical means of that transmission". (R. 1176) And the opinion appears to conclude that jurisdiction extends over all of the facilities of Petitioner, even those adjacent to the premises of the consumer. (See R. 1173-1175)

Certainly the opinion does not sustain the conclusions of the Commission that certain facilities of Petitioner were not "facilities used in local distribution". The Court construes the Act as not withholding from the jurisdiction of

the Commission facilities used in local distribution, and says (R. 1175):

> "Therefore, whether or not the facilities by which petitioner distributes energy from Massachusetts should be classified as 'local' is not relevant to this case. The sole test of jurisdiction of the Commission over accounts is whether these facilities, 'local' or otherwise, are used for the transmission of electric energy from a point in one State to a point in another."

This view seems to be essentially different from that now taken in Respondent's brief, as we point out later.

A. The Evidentiary Basis of the Finding.

We deem it unnecessary to discuss further the question as to the duty of the Court below to weigh the evidence as to the presence of energy generated in Massachusetts on the facilities of Petitioner. This matter is discussed in our original brief, pp. 50-51 and 68-79. The cases there cited do not appear to have been overruled and should, we submit, be followed. In our original brief (except on the pages just mentioned) and in the remainder of this brief we assume for the sake of argument that electric energy from Massachusetts actually passes through facilities of Petitioner at Bristol.

The question as to whether the facilities at Bristol and elsewhere are facilities "used in local distribution" within the meaning of the Act depends primarily upon the construction of the statute. The conclusion of the Commission that certain of Petitioner's facilities were facilities "used for the transmission of electric energy . . . as distinguished from local distribution thereof" is based upon an interpretation of Sec. 201, which we contend is erroneous and is at war with the fundamental purposes of the Federal Power Act. (See pp. 44-47 of our brief.) All of the facilities were part of Petitioner's distribution system.

They would not have been required had Petitioner not distributed electric energy locally in the districts in which they were situated.

A discussion of their nature and functions is contained in the appendix, pp. 16–32, *infra*.

B. Discussion of Respondent's Contention that "The Finding Has a Reasonable Basis in Law".

It is somewhat difficult to determine exactly what the Respondent now contends is the meaning of the clause, "facilities for transmission of electric energy in interstate commerce", and the so-called "but" clause in Sec. 201, which mentions facilities "used in local distribution".

Apparently it construes the first of these clauses as including all facilities up to the point where the function of conveyance in bulk over a distance is completed and the process of subdividing the energy for local consumers is begun. (p. 15 of Respondent's brief) It contends that no decision of this Court has established a point at which "interstate transmission" ends, and seems to find nothing in the Act which clarifies the matter. It does not appear to follow the construction adopted by the Court below, which apparently includes in interstate transmission facilities all "kinds of equipment over which the energy flows in its instantaneous passage from a generator in one state to a consumer in another." (R. 1176) Instead, Respondent adopts the test laid down by one of its own engineers, who formulated a definition which first appears in his testimony in this case and disregarded the classification already made by the Commission for accounting purposes.*

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* Compare his testimony copied on pp. 16–17, *infra*, with the following from paragraph 16, p. 62, of Federal Power Commission Uniform System of Accounts, effective January 1, 1937:

"Stations which change the energy from transmission to distribution voltage shall be classified as distribution stations."

The definition of "transmission" and "distribution" as applied to facilities by this engineer can be judged from the following excerpts from his testimony (R. 499-500):

> "The transmission of energy in a utility system is the conveying of the energy in bulk from a point at which it is available to a point at which it is needed. Its significance is transportation or conveyance.
> "Distribution of energy in a utility system is a subdividing [1623] of the bulk energy delivered to a neighborhood, among the various consumers. Local distribution narrows the operation down to a group of consumers so closely associated as to use common distribution facilities without the necessity of considering the element of transmission between members of the group.
>
> . . .
>
> "In cases where both functions are served by the same facilities, it is considered that a facility is a transmission facility, as long as a material part of its utility as measured by the requirements of design depends upon transmission of energy where distance is an obstacle."

The electric system in every town or village, however small, has lines carrying energy at voltages higher than the voltage used by the consumers. They convey "energy in bulk from a point at which it is available to a point at which it is needed," i.e., to what this engineer calls a "neighborhood". Under his test, it is obvious that no electric system could exist without facilities which he would characterize as "transmission facilities" as distinguished from "distribution facilities".

But the brief of the Respondent says, "the Commission neither purports nor intends to assume jurisdiction under

§201(b) over the facilities of all local distributing companies".* (Footnote 2, p. 28)

This statement is difficult to reconcile with the test adopted by the Commission in its opinion. (R. 75)

We submit that the correct test is to be found in the cases, the statute, and its legislative history. In a situation such as that here presented, interstate movement extends no further than the point of delivery to the distributing company. Moreover, all facilities beyond that point are facilities used in local distribution. (See our original brief, especially p. 34)

In regard to the construction of the so-called "but" clause, which mentions facilities "used in local distribution", Respondent's brief says (p. 30):

> "Analysis of the statute and its legislative history reveals, however, that the 'but clause' was inserted out of an abundance of legislative caution in order to emphasize that while ownership or operation of the facilities described therein does not make a person a 'public utility' under the Act, the Commission's regulatory authority specifically granted in other sections of the Act extends to facilities named in the 'but clause' when owned by a 'public utility.' The 'but clause' and the preceding grant of jurisdiction over 'all facilities' for interstate transmission, when read together, are complementary and do not create overlapping categories. The 'but clause' clarifies but does not limit the scope of the preceding 'all facilities' clause."

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* The assertion in the Respondent's brief (footnote 30, pp. 27-28) that it is unusual for local distributing companies to own the step-down substations at which energy at high voltage is delivered appears to be incorrect. It is noteworthy that the brief filed in

Later the brief states (footnote p. 23):

"Since the Bristol facilities take out-of-state energy, they clearly cannot be intrastate transmission facilities within the meaning of the Act. Moreover, contrary to the contention of the State of Connecticut, failure to hold petitioner's Bristol facilities to be used 'only for transmission of electric energy in intrastate commerce' will not mean that the Commission will then have jurisdiction over all petitioner's facilities up to the consumers' appliances, for the Commission admits that ownership of facilities used *only* in local distribu-

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behalf of the National Association of Railroad and Utilities Commissioners in support of our petition for certiorari indicates that the contrary is true. (See p. 23) An investigation of a large number of companies made at our request indicates that the vast majority of such stations are owned by the local distributing companies. A great inconvenience would be caused if when repairs were needed in such a station repairmen had to be obtained from the transmitting company. They might, and probably would, have to come from a distance. The local company is in a much better position to know its needs, to design such a station, and to keep it in repair. It is worthy of mention that the substation at Bristol was designed by an engineer of Petitioner to take care of the changing situation there.

Petitioner knows of ten substations in Connecticut at which a distributing company receives energy at high voltage from its vendor. Nine of these substations are owned by the local distributing company and only one by the vendor. Inquiries made of companies outside of Connecticut also indicate that a large majority of distributing companies which purchase their energy own the substations at or near which it is delivered.

Consequently, even if the Commission's test of its jurisdiction were dependent upon the ownership of such substations, it would have jurisdiction over a vast majority of local distributing companies which purchase electric energy some part of which is generated in another State. But, as we have pointed out, the test which the Commission has adopted would give it jurisdiction over many lines between such substations and the ultimate consumer, regardless of the ownership of the substation.

> tion of out-of-state energy are excluded from its jurisdiction under Section 201(b) of the Act."

These statements are confusing.

They seem to disregard the testimony of the Commission's engineer upon which it relied. He testified (R. 499):

> "A complication enters, in that certain of the structures in the system serve both functions ["transmission" and "distribution"] at the same time, in varying degrees."

It is evidently to avoid this confusion that the Commission now confines its disclaimer of jurisdiction to those facilities which are "used *only* in local distribution of out-of-state energy". The Commission supplies this word "only"—it does not appear in the Act with the words "used in local distribution". The absence of this word "*only*" here is particularly significant in view of the fact that the words "over facilities used in local distribution" are followed by the following words—

> "or *only* for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed *wholly* by the transmitter." (Italics ours)

The words of the statute indicate that if facilities have a use in local distribution, even though they are also in some sense used in transmission, they are withheld from the jurisdiction of the Commission. Under the circumstances the applicable principle is that the Federal sphere of jurisdiction is to be carefully limited. (See cases cited on p. 31 of our brief)

We submit that the conclusion as to the meaning of the "but" clause reached in Respondent's brief is not sustained by the legislative history to which it refers. The

reports of Committees and the changes in the bill show clearly that Congress did not intend to regulate purely local companies, and that it did intend to exclude from the general jurisdiction of the Commission facilities used in local distribution. (For discussion of the legislative history on this particular point, see brief filed in behalf of the Connecticut Public Utilities Commission and the National Association of Railroad and Utilities Commissioners as *amici curiae* in support of the petition for certiorari on August 23, 1944, pp. 15-21, and pp. 39-41 of our brief.)

II.

DISCUSSION OF RESPONDENT'S CONTENTION THAT "REGARDLESS OF PETITIONER'S PRESENT STATUS, IT WAS A 'PUBLIC UTILITY' WHILE THE COMMISSION'S ACCOUNTING ORDERS WERE IN EFFECT, AND IT REMAINS UNDER A DUTY TO COMPLY WITH SUCH ORDERS FOR THE PERIOD IN WHICH IT WAS SUBJECT TO THE COMMISSION'S JURISDICTION."

Respondent contends that, apart from the Bristol facilities, Petitioner was a public utility at various times on account of facilities at East Hampton, Winsted and the Groton district.

Further discussion as to whether Petitioner was subject to the Commission's jurisdiction because of any of these facilities seems unnecessary. For the reasons stated in our original brief we contend that it was not.

We reiterate our contention that even if Petitioner was a public utility, no useful purpose would now be served by requiring it to comply with the accounting orders of the Respondent.

Respondent's brief appears to admit that if a company discontinues the operation of facilities which made it a "public utility" within the meaning of the Act, it ceases to be such under the Act. (Brief, p. 42) It is also clear that the Commission never had authority to regulate any

of Petitioner's rates or issuance of securities. (See Respondent's brief, p. 45)

Respondent contends, however, that the compilation of accounts for past years in accordance with the rules of the Federal Power Commission would serve a useful purpose. But the Connecticut Commission has during all of those years required detailed accounting, and it has issued orders for the furnishing of such cost studies as it desires.*

In support of its argument under this point, Respondent's brief states that during the debates in the House it appeared that there were alleged write-ups aggregating $21,000,000 in accounts of Petitioner and two companies since merged in the Petitioner. (p. 43 of brief; see also footnote 14, p. 7)

We fail to see how any such statement can have any bearing on any issue in this case. Inasmuch as Respondent's brief has twice repeated this charge, however, it seems only proper for us to state the facts.

There is no evidence in the record in this case supporting this statement.

The major part of the item referred to is alleged to have been on the books of the Northern Connecticut Power Company or on the books of the Connecticut Electric Service Company. Whatever those companies may have done, it is certain that no part of those items came to the books of Petitioner when those companies were merged in it in 1935. The items in question are not now and never have been on the books of the Petitioner.

The remaining part of the item referred to is highly questionable. The examiner for the Federal Trade Com-

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* See finding and orders in Connecticut Public Utilities Commission, Docket Nos. 6861 and 6861A.

mission, in his report in referring to Petitioner, made no reference to a "write-up". In this connection he made the following statement:

> "Excess cost to the Connecticut Light & Power Company while, in fact, indeterminable, may on one basis be said to have been a negative amount of $741,911.21. On another basis probably as accurate as the first basis, such costs may have been in excess of prior costs by $925,488.79."

(See report of Federal Trade Commission, Vol. 54, pp. 806-807, Senate Document 92, 70th Congress; 79 Cong. Rec., Part 10, p. 10422.)

It is Petitioner's belief that the cost to it which appears on its books was less than the original cost.

The Commission in its opinion has cast slurs upon Petitioner and has endeavored to create the impression that it has been sly and overreaching.* We submit that such contentions have no place in a proceeding of this character and we would disregard them were they not now repeated in Respondent's brief. As they are without foundation, it seems proper to dissipate them even though they are immaterial.

The facts even as set forth in the opinion show how absurd these charges are.

As appears from the Order to Show Cause itself, Petitioner from the start declined to comply with numerous orders of the Commission applicable to public utilities. (R. 50-51)

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*The brief of the Commission also blames Petitioner for delays in having the matter determined. Most of the delay is due to the Commission itself. The provisions of the Act under which the Commission claims jurisdiction took effect in August, 1935. An order to show cause in this matter was not issued until 1941. (R. 48) The hearings were concluded in October, 1941. The opinion of the Commission was not handed down until May, 1942. (R. 83)

At no time did Petitioner in any way mislead the Commission as to the nature of its business or its connections. It is true that it has at all times been the policy of Petitioner, as its president stated at the first day of the hearing, to try to avoid situations which might in the view of the Commission subject it to the Commission's jurisdiction. (R. 145, 361-362) But as the Court said in *Hartford Electric Light Co.* v. *Federal Power Commission*, 131 F. 2d 953, 960:

> ". . . to make such an attempt [i.e., to take steps to escape the Commission's jurisdiction] is not unlawful, is indeed not immoral . . ."

It should be borne in mind that the accounts of Petitioner are subject to supervision and inspection by the Public Utilities Commission of the State of Connecticut. All of the transactions and all of the facilities of the Petitioner are subject to the jurisdiction of the Public Utilities Commission of Connecticut.

III.

CONCLUSION.

Clearly, none of the sales of Petitioner nor any of its activities for which it received compensation are subject to the jurisdiction of the Federal Power Commission nor have they been subject to its jurisdiction at any time. The claim of jurisdiction is based solely upon the fact that until 1941 about 1/5 of 1% of the electric energy dealt in by Petitioner went outside of the State to a customer of a customer of Petitioner, and that for three comparatively small communities which Petitioner served at retail it bought energy from the Connecticut Power Company, some of which, engineers of the Commission assert, was generated in Massachusetts, although Petitioner's contracts called for no such energy. Only one of these communities

is now connected with the lines of the Connecticut Power Company.

We submit that Congress never intended to submit a company such as Petitioner to the jurisdiction of the Federal Power Commission and that the order under review should be reversed.

Respectfully submitted,

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APPENDIX

DISCUSSION OF THE NATURE AND FUNCTION OF PETITIONER'S FACILITIES IN ITS BRISTOL, EAST HAMPTON, AND TORRINGTON-WINSTED DISTRICTS WHICH WERE HELD BY THE COMMISSION TO BE FACILITIES "FOR THE TRANSMISSION OF ELECTRIC ENERGY . . . AS DISTINGUISHED FROM LOCAL DISTRIBUTION THEREOF."

The only witness who testified that any of the facilities of Petitioner in any of these places were facilities which were used for transmission, as distinguished from generation or local distribution, was Mr. Thomas, Engineer, who is Regional Director of the 2nd Administrative District of the Federal Power Commission, with headquarters at Atlanta. He testified in part as follows (R. 499-500):

> ". . . the terms 'transmission' and 'distribution' in electric utility systems, like other broad terms, may be used in a number of different relations and for different purposes, so that no single definition can be drawn for either term that will be consistent and useful in all cases.
>
> . . . . .
>
> "A complication enters, in that certain of the structures in the system serve both functions at the same time, in varying degrees.
>
> "With this explanation, I will define the terms 'transmission' and 'distribution,' in their functional sense, as outlined above in my answer.
>
> "The transmission of energy in a utility system is the conveying of the energy in bulk from a point at which it is available to a point at which it is needed. Its significance is transportation or conveyance.
>
> "Distribution of energy in a utility syste-n is a subdividing of the bulk energy delivered to a neighborhood, among the various consumers. Local distribution narrows the operation down to a group of con-

sumers so closely associated as to use common distribution facilities without the necessity of considering the element of transmission between members of the group.

"Transmission facilities are characterized by the search for low energy losses and economy of structural costs; local distribution by the convenience of customers and of the public and the general necessity of accommodation to many structural limitations due to the use of public rights of way, private yards, esthetic considerations, and so forth.

"In cases where both functions are served by the same facilities, it is considered that a facility is a transmission facility, as long as a material part of its utility as measured by the requirements of design depends upon transmission of energy where distance is an obstacle."

(R. 501):

"Applying these definitions of distribution, it will be found that no two utility systems are alike and a certain flexibility must exist in the definition of the term 'distribution'.

"*Q.* Will you please explain what you mean by certain facilities serving a transmission or a local distribution function?

"*A.* By the term 'function,' I have in mind the objective or plan of the designer of the line who must consider what purposes he wishes to accomplish, and what means he has at his disposal. *In this functional analysis of facilities, the actual purpose of the design will guide as between transmission and distribution.*" [Italics ours.]

It is obvious that any facility in an electric system

through which electric energy flows is used for transmission, and any attempt to classify a particular facility as one for transmission or one for local distribution must depend to considerable extent upon the emphasis which one wishes to place upon its functions.

There is no evidence that any of the facilities of Petitioner in any of these three areas was designed with a view to receiving energy from Massachusetts or to the transmission of energy from the distance which that would entail. Mr. Thomas admitted that he did not mean to say that any of the facilities was specifically designed to receive Massachusetts energy. He knew nothing about their history nor why they were laid out, and he was unable to state any particular in which they were peculiarly fitted for receipt of energy from that distance. (R. 632-636)

Insofar as Mr. Thomas intended to indicate that any of the facilities which he mentioned were used neither for local distribution nor for generation, his conclusions are not those which should be reached for purposes of determining jurisdiction of the Federal Power Commission. His testimony in this matter was received as evidence of classification only in the "narrow sense" as to how the terms were "used and applied by persons particularly engaged or interested in the design, construction, operation or maintenance of electric utility systems". (R. 497-498)

When counsel for Petitioner objected to questions asked of this witness on the ground the witness was in fact interpreting the Act, the trial examiner said (R. 498):

> "I think this clearly shows that it is not intended as an interpretation of the Act. . . . For that reason, and with the understanding that this is taken only in that narrower sense, the witness will be permitted to answer."

Now, however, the Commission is taking the position

that the basis for its conclusion is this very testimony of this witness.

Mr. Thomas made the following significant statement (R. 500):

> "In cases where both functions are served by the same facilities, it is considered that a facility is a transmission facility, as long as a material part of its utility as measured by the requirements of design depends upon transmission of energy where distance is an obstacle."

This statement indicates that such testimony of Mr. Thomas as was directed toward specific facilities owned by Petitioner has no bearing upon the question of whether those facilities are "used in local distribution," since that testimony apparently is based upon the premise that these facilities must be placed in only one of two categories, regardless of the fact that they might properly be said to belong in both categories. That premise, however, has no relation to the criteria of jurisdiction contained in the Federal Power Act, for, as we have shown, the test is not whether certain facilities should be classified as transmission or distribution facilities. The test is a much simpler one—namely, whether they are "used in local distribution."

Consequently nothing that Mr. Thomas said with reference to any specific apparatus of Petitioner has any probative value. It is not directed to any matter in issue. There remain only his general statements as to what in his opinion as an engineer is meant by the words "distribution" and "transmission".

We submit that for two additional reasons Mr. Thomas' testimony is not helpful: because it appears that actually the purpose of design of some of the facilities in question was primarily for local distribution; and because the clas-

sification which he made was very different from that made by the other engineers who testified in regard to this, *i.e.*, Professor Lewis and Professor Scott. No other witness supported Mr. Thomas in the classification of the facilities in question. It is important, then, to see what the other witnesses said in regard to this matter.

The following are extracts from the testimony of Dr. Lewis (R. 886-888):

> "As I see it, every circuit of any physical length must consider in its broadest sense some element of transmission, because clearly, if the load is to be supplied, the energy must be transmitted from points nearer to the source, to points nearer to the load, and ultimately to the load itself, and no circuit can ignore entirely this concept. Even circuits within a private house must consider the element of transmission, in the sense that the size of the conductor must sometimes be increased in order to reduce the voltage drop in the line, even though such a conductor size is not essential to carry the current without injurious heating.
>
> "I would therefore qualify 'local distribution' somewhat as follows: Local distribution narrows the operation to a group of customers located in contiguous territory, and involving those circuits and pieces of equipment which may or are designed to serve several customers."
>
> . . . . . .
>
> "By Mr. Branch: And again, in speaking of the functions of transmission and distribution, Mr. Thomas, on page 1303 said:
>
> " 'In cases where both functions are served by the same facilities, it is considered that a facility is a transmission facility as long as a material part of its utility as measured by the requirements of design de-

pends upon transmission of energy where distance is an obstacle.'

"Do you agree with that statement of Mr. Thomas? *A.* I would not personally agree with it if Mr. Thomas means to imply that a facility for which a material part of its utility depends upon transmission is classified as a transmission facility to the exclusion of the possibility that it may also be classified as a distribution facility, if any material part of its function is directly associated with distribution. To me, there is no clear line of demarcation between transmission and distribution, and certain facilities might easily be classified as transmission by one engineer, and distribution by another, and I would be unwilling to ascribe to a definition which insists that all facilities are transmission exclusively, if they have any transmission function in the functional sense of the word.

"*Q.* All right. Do you believe it possible to draw a complete distinction then between the terms 'transmission' and 'distribution' or 'transmission' and 'local distribution'? *A.* In my opinion, these terms overlap to a greater or less degree. I therefore believe that any sharp distinction between these two terms must be arbitrary, and not of a purely engineering character. It seems to me that this question in many cases depends upon the function the designer had in mind when the facility was designed and built, and it is not possible for someone else to assign a hard and fast function either as transmission or distribution."

The following are extracts from the testimony of Professor Charles F. Scott (R. 982-985):

"*Q.* Is there any clearly defined line of demarcation in the generally accepted use of these terms, be-

tween 'transmission' on the one hand, and 'local distribution,' on the other? *A.* The distinction is rather one of function than of definite quantities. There is, for example, no particular distance or no particular voltage or amount of power which may be distinguished one from the other. What in one place and under certain circumstances might be properly considered as transmission may, under other circumstances, employ greater power or greater distance, or greater voltage in what is termed a distribution system."

. . . . . .

". . . A valid classification, therefore, must contemplate everything between the generator and the ultimate consumer. Of course, all circuits actually transmit power, but the term 'transmission,' from the engineering viewpoint, is primarily associated with the source of power, whereas 'distribution' is primarily associated with the destination and employment of electric power."

. . . . . .

"*Q.* Will you continue? *A.* Ordinarily, therefore, since transmission logically ceases where the wholesale delivery of power occurs, and the further facilities have close relation to the delivery of power to the retail customer, the classification of an actual system into two divisions should be made at that point, so that the substation and circuits emanating from it would be included within the term 'distribution'.

"*Q.* I am going to read to you a quotation from the testimony of Mr. Thomas, it being a statement which he made in making a distinction between the terms 'distribution' and 'local distribution.' This is the statement:

" 'Distribution of energy in a utility system is a

subdividing of the bulk energy delivered to the neighborhood among the various customers. Local distribution narrows the operation down to a group of consumers so closely associated as to use common distribution facilities without the necessity of considering the element of transmission between members of the group.' That is the end of the quotation. What have you to say in regard to the distinction indicated in that statement? *A.* I cannot agree that it is a recognized distinction. In my experience, there is no such generally accepted distinction between the terms 'local distribution' and 'distribution.' I regard the word 'local' as conveniently descriptive of distribution as contrasted with the term 'long distance,' when applied to transmission."

Professor Scott was of the opinion that all of the facilities of Petitioner which Mr. Thomas characterized as "facilities for transmission" were facilities which were used either for local distribution or generation.

Professor Scott testified that all of the facilities in Bristol owned by Petitioner were "facilities used in local distribution" and gave the following explanation (R. 985-986):

"The principal facilities in the substation at Bristol are the transformers and the synchronous condenser. These facilities seem to me to be clearly a part of the local distribution system. The transformers have been designed to supply energy at two particular voltages which are suited to the requirements of the Bristol distribution system. The transformers, as I understood, were specified by the engineer of the Connecticut Light and Power Company to meet the particular conditions and requirements of this distribution system. This, to my mind, makes their design,

installation, and operation for the specific purposes, and to meet the specific requirements of a distribution system. Certain apparatus, including the lightning arrestors and the switches are for the protection and operation of the transformers, and are therefore simply auxiliary to them. The synchronous condenser performs two functions directly related to the distribution system. The first of these is the maintenance of a steady voltage on the distribution system; the second function of the synchronous condenser may be illustrated as follows: Induction motors require for their operation two kinds of current. One is a magnetizing current required when the motor is loaded, and also when it is running empty. The other is the power current which varies in proportion to the power delivered by the motor. The synchronous condenser produces the magnetizing current which is necessary to the proper operation of the distribution system, and therefore is an element in the local distribution system. Thus, the transmission properly ends with the termination of the Connecticut Power Company's line."

And he testified (R. 987, 989):

"At the substation in Middletown, the 66,000 volt circuit terminated, and the energy was transformed to about 4,000 volts and 13,000 volts. From that substation several circuits emanated, from one of which customers in Middletown were served. Furthermore, from the substation in Portland, various circuits supplied factories at about 13,000 volts and commercial and domestic consumers at about 4,000 volts. The circuit which ran from the substation in Portland to Pole No. 110, a distance of nearly a half mile, was tapped to serve residential customers. Thus it appears that

even before the energy had reached Pole No. 110 at which the facilities of The Connecticut Light and Power Company began, it had been transformed into two different voltages and supplied over various circuits to many customers of different types and different locations. From Pole 110, where the energy was metered, the energy went to two substations of The Connecticut Light and Power Company at about 13,000 volts. One of these was the Collins Hill substation and the other the West High substation, both of which customers of the company were served; from the West High substation circuits operating at about 13,000 volts went to various substations from which customers were supplied, including the Leesville substation and those at Comstock Bridge, Westchester and Colchester. Looking at the matter as it is regarded in the industry, some of the points I note are as follows: Clearly the main purpose of this line was to make energy available to many customers in scattered groups. The system is in the country. Its function is distribution to ultimate consumers; since it is in the country we naturally expect that the distances between customers will be greater than in an urban area. These distances between customers do not alter the characteristics, which are distribution. I notice that the voltages, about 13,000 volts and 2,300 volts, are characteristic of distribution. In a thickly settled city, where voltages are used for distribution, these values are found. We have here a system which is like the distribution in the City, except that it is spread out. In general, moreover, the lines have the characteristic of ordinary distribution lines.

"*Q.* Professor Scott, you have talked about the lines and have expressed your opinion generally about the facilities. Would your characterization of the fa-

cilities in this area, as facilities used in local distribution, include the substations which you have mentioned, belonging to The Connecticut Light and Power Company with the transformers and other incidental apparatus? *A.* Yes. I regard the system including these substations and the lines to them and the lines from them, as being devised and planned from the standpoint of reaching the customer, and from the general classification which I gave when it is the needs of the customer and the circuit for supplying those particular needs, I class that as primarily distribution."

. . . . . .

(R. 991-993):

"*Q.* Very well. In your opinion as an engineer, are the facilities of the Connecticut Light and Power Company in the Winsted-Torrington district, facilities for transmission or facilities used in local distribution, based on your explanation of these terms?

. . . . . .

". . . *A.* I should classify all the facilities of the Connecticut Light and Power Company in this district as facilities for local distribution, except the facilities of the Robertsville plant, which I would call facilities for generation. Most of what I have said—

"*Q.* Will you explain? *A.* Most of what I have said about Middletown is applicable here. The facts regarding voltage and distance, while they should be considered, are not determinative, for, as I have said before, the test is not a quantitative one. The principal point of difference is the stepped-up line, stepped-up in voltage, which runs to Winsted. The characteristics of this line differ from those usually associated with transmission facilities. Transmission

lines are characteristically, though not always, carried on high steel towers, and are not found along city streets or highways, whereas the Torrington-Winsted line is carried on wooden poles, and for at least a part of the way along city streets and highways in the manner usually associated with lines for local distribution. Higher voltage that the Torrington system is employed merely for engineering reasons. Formerly it served several customers, as I understand, and in this it was clearly fulfilling a function of distribution. Reduction in the number of customers served does not justify a change of classification from distribution to transmission, where substantially the same construction is used and the function and general characteristics remain the same. Taking a comprehensive view of the system, distribution began at Torrington, where the transmission of the Connecticut Power Company delivered power to the Torrington Electric Light Company."

Professor Lewis did not go into the matter of particular facilities in great detail, and was asked only about facilities at Bristol. He was of the opinion that these facilities performed distribution functions and specifically that the synchronous condenser would serve "a distinctly distributional function if it is found that the power factor of the load in Bristol is relatively low and that it is desired to improve the power factor, in order to minimize the voltage drop in the transformers, and control the voltage at substations in order to produce more nearly consistent voltage on customers' lines" (R. 2359-2360).

As to the function and use of facilities in the substation at Bristol, the testimony of Calvin T. Hughes is of peculiar weight as he designed the substation.

He testified as follows in regard to this matter (R. 841-842):

"*Q.* At the time of the installation and design of those facilities at Bristol substation, what, if any, other facilities were installed or designed? *A.* There were other facilities installed in connection with design and construction of the substation. All circuits, that is, the 13,800 volt, the 4800 volt circuits, which originated in the substation, were revamped, reconstructed, and the voltage changed, and additional circuits added. Or, in other words, a complete system was worked out for supplying the territory.

"*Q.* You have stated that you supervised the design and construction of these facilities of the Connecticut Light and Power Company. Did you at that time have any objective or plan which you wished to accomplish? *A.* Yes.

"*Q.* Will you state what this objective or plan was? *A.* The company had purchased the Bristol property about 1926. Due to increased loads in the district, it became evident very shortly that the existing facilities were inadequate to provide proper service, and I was assigned the task of designing a complete distribution system to replace the inadequate ones, this to include all necessary facilities from the point of receiving the power to the ultimate delivery to customers. This study early indicated that it would be economical to utilize two voltages. Hence, the transformers were purchased with three windings, namely 66,000 volts, 13,800 volts and 4800 volts. The 13,800 volts would be used to supply the larger industrial loads, and the 4800 volts to supply the residential and some commercial loads. The smaller amount of load in the center of the city was retained at the prior voltage of 2300 volts. The plans had not progressed very

far before it was realized that the heavy industrial loads had a low power factor, that is, required a considerable excitation current. So it was decided to install a 10,000 k.v.a. synchronous condenser and connect it to the 13,800 volt bus which supplied the larger part of the industrial load. The location of the present outdoor bus structure, transformers, and appurtenances, was determined by the following factors: First, it was necessary to maintain service throughout the construction period over the then existing facilities. Second, at that time there was a steam heating plant which occupied the space immediately south of the present brick building which houses the indoor substation. Therefore, the present location was adopted.

"*Q.* Is there anything in the design or structure of the facilities which you have described which were adopted, or which were uniquely adopted to receive energy from out of the State? *A.* No.

"*Q.* Bearing in mind, if you will, your objective or plan, will you state the functions performed by the various facilities of the company in Bristol, those facilities which you of course have described? *A.* All the facilities are used for the purpose of distributing locally the power received from the Connecticut Power Company to the customers of the Connecticut Light and Power Company."

. . . . . .

(R. 843):

"*Q.* Mr. Hughes, in your opinion as an engineer, bearing in mind, if you will, the explanations you have made of the functions performed by these facilities, in your opinion are these facilities used in the local distribution of electric energy?

Trial Examiner: You may answer the question.
The Witness: Yes."

(R. 938-939):

"*Q.* Mr. Hughes, is the synchronous condenser in Bristol in continual use? *A.* No.

"*Q.* Can you explain when and why it is used? *A.* The Bristol condenser is used during the periods that the industrial load is on, or, I mean by that, when the larger industrial customers are drawing considerable power. It is not on nights, Sundays, holidays, a good many Saturday afternoons, and is ordinarily during the work week started up, in the morning, about the time the factories start, or the loads start to come on, and it is shut down in the evening.

"*Q.* What relation does what is done have to the 13.8 k.v. line running out of the Bristol substation? *A.* It is always started, and our sole objective in operating the condenser, I say our sole objective, it is the major, if not its entire use, is to maintain the voltage on the 13,800 volt bus with which the 13.8 feeders are connected."

The conception of Mr. Thomas as to local distribution is so narrow that if the term, as used in the Federal Power Act, were construed to conform with his characterization, it would be largely or wholly ineffective. It is hard to conceive of any company serving a community at retail which would not have facilities for transmission as distinguished from facilities for local distribution, as those terms are used by Mr. Thomas. In specifically exempting jurisdiction "over facilities used in local distribution" Congress intended to exempt companies which did merely a local business. The three districts of Petitioner under discussion are entitled to precisely the same treatment as if

each district were served by a single separate company. Each serves only a comparatively small area and in none of them is any transmission of energy for any great distance involved.

At Bristol Petitioner's facilities, which Mr. Thomas classified as used for transmission purposes, are merely those in a substation in the heart of Bristol, covering a small area. Any transmission which occurs in these facilities extends over a distance of only a few feet. The transmission of electricity incidental to the supply at Bristol was over lines of Connecticut Power Company, including the line from Bristol Mountain to Bristol substation, a distance of about a mile. Petitioner owned none of this line. Obviously, its substation was designed merely in connection with its local business at Bristol. Congress, we submit, did not contemplate that ownership of such a substation and the facilities which it contained should subject a company to Federal jurisdiction.

The situation as to East Hampton and the Torrington-Winsted district was somewhat different owing to the fact that these two districts serve less compact areas than Bristol and the distances between customers is larger. There are considerable distances in places along the lines in which no customers are served, but we contend that Congress did not intend to submit companies to the jurisdiction of the Federal Power Commission merely because territories which they served were sparsely inhabited.

We submit that the Commission's test of classification for purposes of Section 210(b)—that adopted by Mr. Thomas—is based upon an incorrect view of the meaning of the statute. It is inconceivable that Congress intended to submit a company doing a purely local business to the jurisdiction of the Commission, because it had lines some 10 or 15 miles long used in connection with the purchase

of electric energy from another local company for distribution in the immediate area or that a company should be subjected to the jurisdiction of the Commission because it had a single piece of apparatus such as the synchronous condenser at Bristol, the use of which was occasioned by the nature of the local load.